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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/023,977	12/21/2001	Kenneth G. Stewart III	6714/38242	8245
23646	7590	11/02/2004	EXAMINER	
BARNES & THORNBURG 750-17TH STREET NW SUITE 900 WASHINGTON, DC 20006			VU, STEPHEN A	
		ART UNIT	PAPER NUMBER	
		3636		

DATE MAILED: 11/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/023,977	STEWART ET AL <i>CS</i>
	Examiner Stephen A Vu	Art Unit 3636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 15 July 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-4, 10-12, 14, 15 and 17-22 is/are pending in the application.
 - 4a) Of the above claim(s) 11 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-4, 10, 12, 14, 15 and 17-22 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input checked="" type="checkbox"/> Other: <u>Appendix A - #5,346,279</u> . |

DETAILED ACTION

Election/Restrictions

Amended claim 11 is directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the applicant has rewritten claim 11 with the limitations of claim 10, which was withdrawn by the examiner to a nonelected invention as discussed with Mr. Mark Newman, on April 22, 2004.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 11 has been withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Objections

Claims 10-11 are objected to because of the following informalities: both claims did not provide the proper annotations to indicate that the claims have been amended. For example, claim 10 has been amended without indicating what language has been removed and inserted. In addition, in claim 11, the claim identifier signifies "Original", but it appears that claim 11 has been amended without indicating what language has been deleted and inserted. Appropriate correction is required.

Claim Rejections - 35 USC § 112

Claims 18-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 18, the first and second supports are both stated to be affixed to "an end" of the first armrest and the third and fourth supports are both stated to be affixed to "an end" of the second armrest. Therefore, the limitations appear to be indefinite, because it gives the false impression that the applicant is referring to the same end for each of the first and second armrests.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Pecorella (#5,346,279).

Pecorella shows a support device comprising a pair of arm rests (74), at least one base member (30), at least one first support (78) affixed to the base member (30) and one of the arm rests (74) between a middle and a front end of the arm rest, at least one second support (78) affixed to the base member and one of the arm rests (74) between the middle and a rear end of the arm rest (see attached Appendix A-#5,346,279). It is interpreted that the tray (70) can be removed from the arm rests (74). And thus, the arm rests each have actuate slots (76), wherein the first arm rest can be

adjusted so that the first support (78) is positioned closer to the front end than to the middle of the arm rest. The second armrest can be adjusted so that the second support (78) is positioned closer to the rear end than to the middle of the armrest. The first and second supports are vertically adjustable with respect to the base member. The armrests are connected to each other via the first and second supports and the base member.

With claim 2, the support device does not extend to a floor.

With claim 14, the device has a backrest.

Claims 1-2, 10, 12, 14-15, and 18-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Boyer et al (#4,967,864).

With regards to claim 1: Boyer et al show a support device (14) comprising a pair of arm rests (102), at least one base member (16), at least one first support (110) affixed to the base member (16) and one of the arm rests (102) between a middle and a front end of the arm rest and closer to the front end than to the middle of the arm rest, at least one second support (114) affixed to the base member and one of the arm rests (102) between the middle and a rear end of the arm rest and closer to the rear end than to the middle of the arm rest. The first and second supports are vertically adjustable with respect to the base member. The armrests are connected to each other via the first and second supports and the base member.

With claim 2, the support device does not extend to a floor.

With claims 10 and 12, the armrests (102) are padded (112).

With claims 14 and 19, the device has a backrest (18).

With claims 15 and 20, based on the broadest reasonable interpretation, it is deemed that the armrests have a crutch shape.

With regards to claim 18: Boyer et al show a support device comprising a pair of arm rests (102), at least one base member (16), a first support (110) affixed to the base member (16) and a first arm rest (102) and closer to an end than to the middle of the first arm rest, a second support (114) affixed to the base member and a first arm rest (102) and closer to an end than to the middle of the first arm rest, a third support (110) affixed to the base member (16) and a second arm rest (102) and closer to an end than to the middle of the second arm rest, a fourth support (114) affixed to the base member and a second arm rest (102) and closer to an end than to the middle of the second arm rest. The first, second, third, and fourth supports are vertically adjustable with respect to the base member. The armrests are connected to each other via the supports and the base member.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 3-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Percorella (#5,346,279).

With claim 3, Percorella discloses the claimed invention except for the weight of the device to be less than ten pounds. It would have been an obvious matter of design choice to construct the support device to be less than ten pounds, since applicant has not disclosed that the desired weight of the device less than ten pounds solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with the device being more than ten pounds, like at eleven pounds.

With claim 4, Percorella discloses the claimed invention except for the arm rests to be raised or lowered over a range of about 5 to 18 inches. It would have been an obvious matter of design choice to design the arm rests to be raised or lowered over a range of about 5 to 18 inches, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Percorella (#5,346,279) in view of Murphy (#5,876,010).

Percorella discloses the claimed invention except for the base to have a non-slip material on the bottom side. Murphy teaches a pad (10) having a non-slip surface (22) consisting of a textured rubberized layer below the base (20) (see col. 3, lines 43-49). It

would have been obvious to one of ordinary skill in the art at the time the invention was made to employ Murphy's non-slip material on the bottom side of Percorella's base in order to increase the coefficient of friction between the base and the seat and prevent the base from sliding out of position on the seat.

Claims 3-4 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boyer et al (#4,967,864).

With claim 3, Boyer et al disclose the claimed invention except for the weight of the device to be less than ten pounds. It would have been an obvious matter of design choice to construct the support device to be less than ten pounds, since applicant has not disclosed that the desired weight of the device less than ten pounds solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with the device being more than ten pounds, like at eleven pounds.

With claims 4 and 22, Boyer et al disclose the claimed invention except for the arm rests to be raised or lowered over a range of about 5 to 18 inches. It would have been an obvious matter of design choice to design the arm rests to be raised or lowered over a range of about 5 to 18 inches, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

Claims 17 and 21 rejected under 35 U.S.C. 103(a) as being unpatentable over Boyer et al (#4,967,864) in view of Murphy (#5,876,010).

Boyer et al disclose the claimed invention except for the base to have a non-slip material on the bottom side. Murphy teaches a pad (10) having a non-slip surface (22)

consisting of a textured rubberized layer below the base (20) (see col. 3, lines 43-49). It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ Murphy's non-slip material on the bottom side of Boyer et al's base in order to increase the coefficient of friction between the base and the seat and prevent the base from sliding out of position on the seat.

Response to Amendment

The examiner has acknowledged and reviewed the applicant's amendment, filed on July 15, 2004. Based on an updated search of the application, the examiner has decided to issue another Non-final Office action to address the applicant's claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. GB 2387776, Sully, and Gaudreau, Jr. have been cited as showing similar types of support device with vertically adjustable armrests.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen A Vu whose telephone number is 703-308-1378. The examiner can normally be reached on M-F from 8:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M Cuomo can be reached on 703-308-0827. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Stephen Vu
October 29, 2004

APPENDIX A

U.S. Patent

Sep. 13, 1994

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FIG. 3.

